

RECORD NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

RASHAUN SCOTT CARTER,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Troy N. Giatras, Esquire*
(WVSB # 5602)
THE GIATRAS LAW FIRM, PLLC
118 Capitol Street, Suite 400
Charleston, WV 25301
(304) 343-2900
troy@thewvlawfirm.com

**Counsel of Record for Petitioner
Rashaun Scott Carter*

TABLE OF CONTENTS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Appendix A:	Opinion and Judgment of the U.S. Court of Appeals for the Fourth Circuit, No. 18-4559, United States v. Rashaun Scott Carter Decided September 13, 2019.....	A1
Appendix B:	Order Denying Petition for Rehearing and Rehearing <i>EnBanc</i> of the U.S. Court of Appeals for the Fourth Circuit, No. 18-4559, United States v. Rashaun Scott Carter Filed November 4, 2019.....	A5

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4559

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RASHAUN SCOTT CARTER,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. David A. Faber, Senior District Judge. (5:18-cr-00054-1)

Submitted: September 3, 2019

Decided: September 13, 2019

Before WILKINSON and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Troy N. Giatras, THE GIATRAS LAW FIRM, PLLC, Charleston, West Virginia, for Appellant. Michael B. Stuart, United States Attorney, Charleston, West Virginia, Timothy D. Boggess, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Beckley, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rashaun Scott Carter pled guilty pursuant to a written plea agreement to conspiracy to manufacture, distribute, and possess with intent to distribute, 28 grams or more of cocaine base, and distribute and possess with intent to distribute more than 100 grams of heroin, a quantity of cocaine, and a quantity of fentanyl. The district court sentenced Carter to 121 months' imprisonment and 5 years of supervised release.

On appeal, Carter challenges the calculation of his drug weight, the quantity of drugs attributed to him, and the application of a three-level enhancement for his managerial role. The government contends that the claims are barred by the appellate waiver in Carter's plea agreement. We review de novo the validity of an appeal waiver. *United States v. Copeland*, 707 F.3d 522, 528 (4th Cir. 2013). We will enforce a waiver if it is valid and the issue appealed falls within the scope of the waiver. *United States v. Davis*, 689 F.3d 349, 355 (4th Cir. 2012) (per curiam). A waiver is valid if it is knowing and voluntary, considering the totality of the circumstances. *Copeland*, 707 F.3d at 528. Carter does not dispute the validity of his appeal waiver, and upon review of the record, we conclude that Carter's appellate waiver was both knowing and voluntary. See *United States v. Thornsbury*, 670 F.3d 532, 537 (4th Cir. 2012). We further find that Carter's claims fall squarely within the scope of his valid appeal waiver, foreclosing review.

Carter next asserts that trial counsel was ineffective for failing to object to the disparate treatment of cocaine base and cocaine powder. While the appeal waiver does not preclude this claim, we do not consider ineffective assistance claims on direct appeal "[u]nless an attorney's ineffectiveness conclusively appears on the face of the record."

United States v. Faulls, 821 F.3d 502, 507 (4th Cir. 2016). As the record does not conclusively establish that trial counsel was ineffective, this claim should be raised, if at all, in a 28 U.S.C. § 2255 (2012) motion. *See id.* at 507-08.

Accordingly, we dismiss Carter's appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: September 13, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4559
(5:18-cr-00054-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RASHAUN SCOTT CARTER

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: November 4, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4559
(5:18-cr-00054-1)

UNITED STATES OF AMERICA

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Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Rushing, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk